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# Legislating the Void, Mantaqat al Faragh, Machine Agency, and the Philosophical Foundations of Artificial Intelligence Law in Iran

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### ABSTRACT

Can a legal order still tell an agent from an instrument, a person from a thing, the author of a decision from the medium through which the decision passes? This article treats that question as the philosophical core of artificial intelligence law rather than as a preliminary to it. Our answer is that the three distinctions cannot be saved as descriptions of what entities are, and that they need not be: they survive as allocations of answerability, made by the legal order and defensible only as such. Three arguments carry the claim. The first is ontological: following Gunkel's trilogy, we hold that the machine is an anomaly the person and thing partition cannot absorb, and that reification and personification are two forms of a single refusal to think it. The second is jurisprudential: the regulatory philosophies of the European Union, the United States and China are best read not as bundles of rules but as three theories of action under doubt, corresponding with unexpected precision to precaution (ihtiyat), presumptive permissibility (asalat al ibaha) and the expediency grounded governmental ruling (hukm hukumati) in Imami legal theory. The third is constructive: Iran inhabits not a legislative vacuum but a mantaqat al-faragh in alSadr's sense, a bounded zone of discretion whose emptiness is itself normatively structured and which is already being filled by licensing and infrastructure policy rather than by legislation. From these we derive a principle we call the assignable answer, and five design consequences of a law that stops asking what a machine is and undertakes instead to say who must answer for it.

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## **Introduction: A Question Law Cannot Postpone**

Begin with a question that sounds abstract and is not. An insurer refuses a claim. A bank declines a loan. A ministry flags a file for further scrutiny. In each case the decisive step was taken by a model whose reasoning nobody in the room can reconstruct, and the human signatory approved the output because there was no practical alternative to approving it. Who decided? Law has an answer ready: the human decided, and the model was the instrument through which the decision was made. We do not believe that answer survives contact with the facts, and we believe the effort to preserve it is now the largest single obstacle to a serious law of artificial intelligence ([Chesterman, 2021](#)).

Generalised, the question is this. Can the juridical order still hold apart the agent and the instrument, the person and the thing, the author of a decision and the medium through which the decision passes? It is a question of legal philosophy in the strict sense, because it concerns not what the law provides but what the law must presuppose before it can provide anything at all. Every rule about artificial intelligence in every jurisdiction is an answer to it. Almost none of them says so, and the comparative literature, busy counting statutes, has not asked ([Floridi, 2023](#)). A curious asymmetry governs the literature on artificial intelligence regulation. Where a jurisdiction has legislated, scholars read its statute as the expression of a legal philosophy: the European Union is said to be rights based, the United States market based, China order based. Where a jurisdiction has not legislated, scholars read the silence as nothing at all: a gap, a lag, a deficit measured against the jurisdiction that legislated first. The absence of law is treated as the absence of thought ([Luhmann, 2004](#)).<sup>1</sup> We begin from the opposite premise. Not-legislating is a normative posture, and often a deliberate one. A state that declines to enact a statute while issuing operating licences, conditioning access to computational infrastructure and regulating synthetic content has not failed to govern artificial intelligence. It has chosen to govern administratively rather than juridically, and that choice embodies a philosophy quite as definite as the one written into a regulation ([Bietti, 2020](#)). Our thesis has two halves, and the second matters more. The first is negative: the three distinctions cannot be rescued at the level of ontology. No definition of an intelligent system, however carefully drafted, will tell a court whether the system acted or was used, because the difficulty is not a shortage of information about the machine but that the concepts of agent and instrument were built for a world in which the two were separable in principle ([Floridi & Cows, 2022](#)).

The second half is affirmative, and here we part company with much of the philosophical literature, including with earlier work by one of us. The collapse of the ontological distinction

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<sup>1</sup> By taxonomic is meant the body of comparative work that ranks legal systems against a checklist of indicators and treats the absence of a statute as a simple deficit. The criticism offered here is not directed at benchmarking as such, but at the assumption concealed within it: that every system is answering the same question and differs only in its answer.

does not entail the collapse of the legal one. Law has never in fact derived answerability from a prior metaphysics of the entity, whatever its textbooks say; it has assigned answerability and dressed the assignment in ontological language afterwards (Kaminski, 2023). Companies do not answer for their acts because someone discovered that they were persons. They were declared persons because it had been decided that they should answer. Artificial intelligence strips the ontological costume from a decision that was always normative, and that is an opportunity as much as a discomfort, since a distinction one must justify is a distinction one can defend, whereas a distinction that passes for a fact of nature cannot be argued about at all. From this follows the article's organising principle, which we call the assignable answer: whenever a determination materially affects a person's rights, some identified human being must be capable of answering for it in ordinary normative terms, and the law's task is to say who that is rather than what the machine is (Scassa, 2023).

Two further claims support the argument and are stated here in compressed form. The first is interpretive: the regulatory philosophies usually described in the political idiom of rights, markets and authority are better described as three theories of action under normative uncertainty, three answers to the question of what an agent may do when it is not yet known whether an act is harmful. That question has a long and technically sophisticated history in Imami jurisprudence, under the heading of the practical principles governing conduct in states of doubt.<sup>1</sup> The purpose of the comparison is not to orientalise foreign law but to denaturalise it, and to show that what circulates as the neutral technical default of global regulation is a substantive philosophical commitment for which an indigenous meta-language already exists. The second claim is constructive: Iran's situation is best theorised not as lacuna but as *mantaqat al faragh*, the zone of discretion which the Lawgiver leaves deliberately unlegislated so that the holder of authority may fill it, according to expediency, within fixed limits.<sup>2</sup> The reframing converts a complaint into a theory, and theories generate constraints. If the empty zone is delegated discretion rather than legislative slowness, then whoever fills it exercises a normative power that requires justification, is bounded by the fixed principles the zone does not touch, and is answerable for the manner of the filling (Veale & Zuiderveen Borgesius, 2021). The article proceeds as follows. Part 2 works through the three distinctions and states our answer to them. Part 3 explains why we rely on Gunkel and where we leave him. Part 4 reconstructs the foreign systems as philosophies of action under doubt. Part 5 develops the theory of the empty

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<sup>1</sup> The practical principles (*al usul al amaliyya*) of Imami legal methodology determine what an agent is to do in a state of doubt, and include the presumption of exemption (*baraat*), precaution (*ihtiyat*), optionality (*takhyir*) and continuity (*istishab*). The argument here is that the regulation of artificial intelligence is, at bottom, a problem of acting under doubt.

<sup>2</sup> *Mantaqat al faragh*, literally the zone of emptiness, is the doctrine developed by Muhammad Baqir al Sadr in *Iqtisaduna*: an area for which the Lawgiver has laid down no fixed ruling, and which the holder of authority may therefore fill, according to the interest of the community, within the limits set by what is fixed. The emphasis in this article is that the emptiness is designed rather than accidental.

zone and applies it to Iran. Part 6 derives five design principles. Part 7 concludes (Farajpour, 2025).

## **1. Agent and Instrument, Person and Thing, Author and Medium**

The three distinctions are usually treated as one. They are not, and separating them is the first analytical gain. The first concerns action, the second status, the third attribution. A legal order can lose one and keep the others, and the order of loss matters, because law's practical difficulty begins with the third and not, as the literature assumes, with the second (Pasquale, 2015).

### **1.1 The instrument that will not stay instrumental**

The instrumental theory of technology is the oldest answer in the philosophy of technology and the one law has quietly adopted. A tool is a means to an end and has no ends of its own; whatever it does, it does because somebody directed it. Aristotle's account of the instrument as that which is moved by another, and Heidegger's summary of the received view as a means to an end and a human activity, name the same structure (Aristotle, 1998).<sup>1</sup> Its legal expression is everywhere. The hammer does not commit the assault, the pen does not sign the contract, and the press is not the publisher. The instrument transmits a will. It does not have one (Heidegger, 1977).

The difficulty is that instrumentality has always been a normative claim wearing descriptive clothes. Latour's argument, which we accept in this respect, is that no artefact merely transmits: each translates, displacing the goal of whoever takes it up, so that the composite of person and tool does what neither would have done alone.<sup>2</sup> With a hammer the displacement is small enough to ignore, and law has been right to ignore it. With a system that selects, ranks and recommends across a space of options no human has surveyed, the displacement is the substance of the outcome. The model has not acquired a will. The human contribution has contracted to a permission while the content of the decision comes from somewhere else (Latour, 2005).

Here the analytic tradition supplies a precision the continental one does not. Anscombe's thesis is that an action is intentional only under a description, so that one movement is one action under one description and another action under another (Anscombe, 1957).<sup>3</sup> Legal

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<sup>1</sup> Aristotle, *Politics* I.4, on the instrument as that which is moved by another and serves as an animate or inanimate part of the household; and Heidegger, *The Question Concerning Technology*, where the instrumental and anthropological definition of technology, technology as a means to an end and as a human activity, is stated in order to be shown to be correct and yet not true. Gunkel invokes the same Heideggerian formula at the opening of his own treatment of things (2023, p. 25). The point for law is that the instrumental theory is the tacit premise of every rule that treats a system as the tool of its user.

<sup>2</sup> Latour's account of mediation distinguishes intermediaries, which transport meaning without transforming it, from mediators, which translate and thereby modify the goal of the actor who takes them up. The legal significance is that the instrumental theory is a claim that a given artefact is an intermediary, and that claim is empirical rather than conceptual. It may be true of a hammer and false of a model.

<sup>3</sup> Anscombe, *Intention*, sections 5 to 26, on the thesis that an action is intentional only under a description. The application proposed here is that the legal attribution of a decision to an official presupposes a description of the

attribution follows the same logic: to say that an official decided is to say that there is some description of the outcome under which she intended it. Where an official ratifies a recommendation, whose grounds are unavailable to her, there is a description under which she acted, namely that she approved, and none under which she decided the substance. Law then faces a choice it ordinarily conceals from itself: treat the approval as the decision, which is a fiction, or concede that the decision had no author, which is an abdication. Part 2.3 proposes a third route (Wachter et al., 2017).

## **1.2 The partition of persons and things**

The inherited ontology of modern law, in the civil and common law traditions and no less in Islamic legal systems, is a binary. There are persons, who bear rights and duties and to whom conduct is attributed, and there are things, which are the objects of rights and through which persons act.<sup>1</sup> The partition is Roman in form and Kantian in justification. Kant's formula, quoted by Gunkel at the opening of his most recent book, is that rational beings are called persons because their nature marks them out as ends in themselves, whereas beings of merely relative worth are called things. Esposito's genealogy adds the observation that the dividing line has never been stable and has never been innocent: it has been redrawn repeatedly, and each redrawing moved a population from one side to the other (Kant, 2012).<sup>2</sup> Iranian private law reproduces the division with unusual clarity: the Civil Code organises itself around *amwal* and *ashkhas*, and the Commercial Code supplies the familiar apparatus by which a fiction, the juridical person, is admitted into the first category for reasons of convenience (Naffine, 2009).<sup>3</sup>

Artificial systems do not sit comfortably on either side of this line. They are manufactured artefacts and therefore things. Yet they exhibit what has been called social presence: they address us in language, they simulate the capacities conventionally associated with personhood, and they generate outcomes that no one specified in advance. The standard responses to the anomaly are reification, which insists that the system is merely a tool, and personification, which proposes that it is a kind of subject. We regard both as evasions, and for the same reason:

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outcome under which the official intended it, and that the ratification of an unexplained recommendation supplies no such description of the substance.

<sup>1</sup> The person and thing division is the foundational partition of modern legal systems between the bearers of rights and duties on the one hand and the objects of rights on the other. The claim advanced here is that intelligent systems do not sit properly on either side of that line.

<sup>2</sup> Kant, *Groundwork of the Metaphysics of Morals*, 4:428, on rational beings as ends in themselves and therefore as persons, and on beings of merely relative worth as things; the passage is quoted by Gunkel (2023, p. 1) as the classical statement of the partition. Esposito, *Persons and Things*, traces the same division through Roman law and argues that its boundary has been repeatedly redrawn for political purposes, most visibly in the law of slavery. Naffine's study of the legal person makes the parallel point from within common law jurisprudence.

<sup>3</sup> See Book One of the Iranian Civil Code (On Property) and Book Two (On Persons), together with Article 583 and following of the Commercial Code on juridical personality. The admission of the juridical person is itself the clearest evidence that the person and thing boundary is conventional and interest driven rather than natural.

each restores the peace of the existing ontology by declaring in advance that nothing new has happened (Coeckelbergh, 2020).

The lesson for legislation is precise and unwelcome. Any statute that opens with a definition of artificial intelligence and allocates duties on that basis has already decided the ontological question in the act of defining, and has decided it in the least reflective way available, by stipulation. This is why definitional sections age so badly. Definition should not be avoided; it should be recognised as an exercise of ontological power, and should therefore be minimal, revisable, and expressly subordinated to the relations the statute means to govern (Coeckelbergh, 2022).

### **1.3 Author and medium, or the turn to answerability**

The third distinction is the one that matters most to law and has received the least philosophical attention. To be the author of a decision is not the same as to be its cause. A power surge causes a machine to stop; it does not author the stoppage. Authorship in the juridical sense carries a further element, which is the capacity to be called upon and to respond: to give the reason, to hear the objection, and to bear the consequence if the reason fails. Responsibility, before it is a doctrine of liability, is a structure of address (Levinas, 1969).<sup>1</sup> Foucault's remark that the author is a function performed within a discourse rather than a person standing behind it is closer to legal practice than most jurisprudence: the author of a judgment is whoever the procedure appoints to answer for it (Foucault, 1998).

Once this is seen, the pressure on the first two distinctions loses most of its force. The literature has posed the opening question as a question about the machine. It is not. It is a question about the availability of an addressee. A legal order does not need to know what an entity is in order to function; it needs to know to whom a claim may be directed, from whom a reason may be demanded, and against whom a judgment may be enforced. Those are institutional facts, not natural ones, and they are settled by decision (Mittelstadt, 2019). We therefore state the principle in the following form. Wherever a determination materially affects the rights of a person, the legal order must ensure that some identified human or juridical person is capable of answering for that determination in terms the affected person can contest. Call it the requirement of the assignable answer. Its virtue is that it is indifferent to the metaphysics of the system: it does not care whether the model is an agent, and it is not embarrassed by the discovery that no human intended the outcome under the relevant description. It asks only whether the chain of human choices that produced the determination can be reconstructed to the point at which somebody is obliged to speak (Smuha, 2021).

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<sup>1</sup> The conception of responsibility as answerability, that is, as liability to be called upon to give an account, is developed in different registers by Levinas, for whom the encounter with the other precedes any determination of what the other is, and by Foucault, whose analysis of the author function treats authorship as a position constituted within a discourse rather than as a property of an individual. The formulation adopted here is deliberately institutional: in law, the author of a determination is whoever the procedure appoints to answer for it.

Two objections deserve an answer. The first is that this merely relabels vicarious liability. It does not, since vicarious liability presupposes an agent, whose act is imputed to a principal, and our principle applies precisely where no such act can be identified. The second is graver: answerability without authorship is unjust, because it holds people responsible for what they did not decide. We accept the force of this and reply that the alternative is worse. Where a party has chosen to introduce an opaque process into a setting of consequence and has taken the benefit of doing so, answering for its outputs is not an arbitrary imposition. It is the price of the choice to deploy, and Part 5.4 shows that Iranian law has long contained the machinery for exactly this reasoning.

#### **1.4 The responsibility gap, reconsidered**

The ontological problem becomes a doctrinal one at the point of attribution. Classical responsibility, in Islamic and Western traditions alike, rests on a conjunction of causal contribution and some form of imputable fault or control ([Matthias, 2004](#)). Learning systems disturb both elements. The developer controls the architecture and the training regime but not the function that emerges from them; the deployer controls the context of use but not the internal logic; the user controls neither and is frequently the only party present when harm occurs. The result has been described as a responsibility gap: the conditions under which we ordinarily hold someone answerable are not met by anyone, although the harm is real and traceable ([Santoni de Sio & Mecacci, 2021](#)).<sup>1</sup>

Two mistakes recur in the response. The first treats the gap as an argument for machine personhood, as though the absence of a responsible human required the manufacture of a responsible non-human; this confuses attribution with ontology and creates an attractive liability shield for the humans who profit from the system ([Bryson, 2017](#)).<sup>2</sup> The second denies that any gap exists, on the ground that behind every machine there is some human who could have done otherwise. That answer is formally correct and practically empty, because it locates responsibility at a level of abstraction at which no particular claimant can obtain a remedy ([Solum, 1992](#)). Part 2.3 dissolves the dilemma rather than adjudicating it. The gap is real, but it is a gap in authorship, not in answerability, and the two come apart. Nothing in the concept of answering requires that the answerer be the author: a minister answers to parliament for a departmental error she neither committed nor knew of, and nobody calls this a metaphysical confusion. What the gap reveals is that liability law modelled on the single intending author is under-specified for distributed causal processes, and that legal systems with a developed law of

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<sup>1</sup> Responsibility gap: the situation in which harm is real and traceable but the ordinary conditions of attribution, namely control and imputable fault, are not fully satisfied in respect of any of the parties involved. The first formulation is Matthias (2004); see also Santoni de Sio and Mecacci (2021) for the disaggregation of the gap into four distinct problems.

<sup>2</sup> The standard objection to machine personhood is that it does not close the gap but supplies a liability shield for the natural and juridical persons who benefit from the system. See Bryson, Diamantis and Grant (2017).

indirect causation are better equipped than those without. Iranian law is such a system (Farajpour, 2024).

### **1.5 The reflexive risk: when law becomes machinic**

Automated systems govern not by prohibition but by anticipation: they operate on profiles rather than persons, act before conduct rather than after it, and dispense with the moment of address in which a subject is called upon to account for herself (Rouvroy & Berns, 2013).<sup>1</sup> The threat has been named algocracy.<sup>2</sup> What is less often noticed is that legal systems may catch the disease they were summoned to cure. A design that treats artificial intelligence purely as an object of control, specifying inputs, mandating filings and enforcing conformity *ex ante*, reproduces in the institution the logic it fears in the machine: mechanical verification in place of normative deliberation (Danaher, 2016). When compliance becomes the whole of legality, judgment atrophies. This is a risk for the Union's conformity assessment machinery and for China's filing regime alike, and for any Iranian statute drafted in the belief that governing artificial intelligence means enumerating obligations finely enough. Law's distinctive contribution is not that it can specify, since standards bodies specify better. It is that it can require a reason, hear an objection, and change its mind. A regime that keeps the first capacity and loses the other two has not regulated the machine. It has become one (CAC, 2023).

## **2. Why Gunkel, and Where We Depart from Him**

A reader may reasonably ask why a work of legal philosophy addressed to Iran should lean on a scholar of communication writing in the United States. The reason is specific rather than deferential. Across three books Gunkel has done what the legal literature on artificial intelligence has largely not done: he has treated the person and thing partition itself as the object of inquiry rather than as the stable background against which inquiry proceeds. Since the question this article is trying to answer is precisely whether that partition still holds, his trilogy is not one source among many but the most sustained statement of the difficulty we are converting into legal terms. We quote him directly at the three points where his formulations do work a paraphrase would undo (Hildebrandt, 2018).

The first concerns the character of the question. The Machine Question closes by refusing the demand for a settlement, on the ground that "the machine institutes a kind of fundamental and irresolvable questioning" (Gunkel, 2012). We take this seriously and read it as a warning against the reflex, common in legal scholarship, of treating the status of intelligent systems as

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<sup>1</sup> Algorithmic governmentality (*gouvernementalité algorithmique*) is the term of Rouvroy and Berns for a mode of government that operates upon profiles rather than upon persons, and that dispenses with the moment of address in which a subject is called to account.

<sup>2</sup> Algocracy is John Danaher's term for rule by processes whose reasoning is inaccessible to those subject to it, and which therefore cannot be contested in the register in which legal claims are made.

a puzzle awaiting the right definition. If the questioning is irresolvable, a statute that presupposes its resolution is built on sand.

The second concerns the discipline of the inquiry. Robot Rights announces its purpose as an attempt "to think the unthinkable" (Gunkel, 2018), and the phrase records something real: the question of machine status is routinely dismissed before it is examined, in Iranian legal writing as much as in European. We cite it because our argument depends on refusing that dismissal while reaching a conclusion the book does not reach.

The third and most important concerns the ontological verdict. In Person, Thing, Robot the robot is characterised as "a monstrous excrescence that escapes the conceptual grasp of existing categories" (Gunkel, 2023). We adopt this diagnosis without qualification. It states, more exactly than any legal formulation we know, why the drafting strategy of definition followed by classification cannot succeed: the object will not hold still inside either box, and the categories were not built with an intermediate case in view (Pagallo, 2013). Our departure begins where the diagnosis ends. Gunkel's response to the anomaly is to suspend ontology in favour of the relation, following Levinas: the encounter with the other precedes and settles any determination of what the other is. As philosophy we find this persuasive. As law we find it insufficient, and the insufficiency is instructive. A court cannot suspend judgment until the relation discloses itself. It must name a defendant on a particular Tuesday, and it must do so under a procedure fixed in advance. Relational thinking tells the judge what she cannot rely on. It does not tell her whom to summon (Gunkel, 2020). This is the gap our principle of the assignable answer is designed to fill, and it is where a legal philosophy can go beyond a moral one. Where Gunkel replaces ontology with relation, we propose replacing ontology with allocation: the legal order does not discover who acted, it decides who must answer, and it accepts the burden of justifying that decision in the open. The move preserves what is right in the relational turn, since the allocation is made with regard to the relations in which the harm arose, while restoring what law cannot do without, a determinate addressee. It also has a consequence Gunkel does not draw and which occupies the rest of this article: if answerability is allocated rather than discovered, the identity of the institution that allocates it becomes the central question of artificial intelligence law. That is a question of constitutional design, and it is where Iran's position turns out to be theoretically interesting rather than merely belated (OECD, 2024).

### **3. Three Answers to a Single Question: Acting Under Doubt**

The three regulatory models identified in the comparative literature are usually distinguished by what they protect: rights, markets, or order. The characterisation is accurate but shallow, because it describes outcomes rather than reasoning. A deeper distinction concerns what each model does when it does not yet know whether an act is harmful. Imami legal theory devotes

an entire branch of its methodology to this problem.<sup>1</sup> Where the mind is in doubt about a rule and no evidence resolves the doubt, one may proceed on the presumption of permissibility (ibaha, baraat); one may adopt precaution and abstain (ihtiyat); or one may recognise that the holder of public authority is entitled to determine the matter by reference to the interest of the community (maslaha), issuing a governmental ruling that binds until the interest changes.<sup>2</sup> The three global models are, structurally, these three answers (Zalnieriute et al., 2019).

### **3.1 Precaution, permission, and prior clearance**

Regulation (EU) 2024/1689 converts precaution from a moral attitude into an administrative architecture: its risk tiers are a doubt management device, placing the burden of demonstrating safety ex ante upon the provider where the gravity of harm to fundamental rights is highest and restoring the presumption of permissibility where it is negligible (European Parliament and Council, 2024). The philosophical interest lies less in the design than in its encounter with time, since the Digital Omnibus of June 2026 defers the core high risk obligations to December 2027 and August 2028 (Teubner, 2018).<sup>3</sup> Three lessons follow, and none is the one usually drawn. Deferral is not evidence that precaution was wrong; it is evidence that precaution is expensive in a currency legislature rarely budget for, which is institutional time (Council of Europe, 2024). A statute that cannot be applied on the day it becomes applicable will be amended under industrial pressure rather than in deliberative conditions. Most important for us, the Union has shown that even the most committed rights-based regime contains a maslaha clause it does not admit to having: competitiveness, administrative feasibility and the burden on small enterprises are expediency judgments of exactly the kind European scholarship criticises when they are made explicit elsewhere. The models differ less in the presence of expediency reasoning than in its visibility (European Commission, 2025).

The American position has moved decisively since the version recorded in most comparative studies, from a federal order on trustworthy artificial intelligence to an executive strategy for pre-empting state regulation (Executive Order No. 14110, 2025).<sup>4</sup> The label market-oriented

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<sup>1</sup> For a more exact comparison it should be noted that the practical principles govern both doubt about the rule (shubha hukmiyya) and doubt about the instance (shubha mawdu'iyya). Technology regulation faces the same pair: uncertainty about what the norm should be, and uncertainty about whether a given system falls under it.

<sup>2</sup> Presumptive permissibility (asalat al-ibaha, baraat): action is permitted until a prohibition is established. Precaution (ihtiyat): abstention until permission is established. The expediency grounded governmental ruling (hukm hukumati): a determination by the holder of authority on the basis of the public interest, valid for as long as that interest persists.

<sup>3</sup> The amending package known as the Digital Omnibus: Commission proposal of 19 November 2025, political agreement of 7 May 2026, European Parliament endorsement of 16 June 2026 and final Council adoption of 29 June 2026. Its principal effect is to defer the obligations attaching to high-risk systems under Annex III to 2 December 2027 and under Annex I to 2 August 2028; the marking of synthetic content produced by systems already on the market slips to 2 December 2026, while a new prohibition on systems for generating non-consensual intimate imagery and child sexual abuse material enters the list of forbidden practices.

<sup>4</sup> Executive Order 14110 (October 2023) was revoked on 20 January 2025 and replaced three days later by Executive Order 14179, Removing Barriers to American Leadership in Artificial Intelligence. The Executive

captures this poorly. What has been produced is a negative constitutional theory of artificial intelligence: the federal government defines the field by what may not be required of developers, while the obligations binding private conduct are generated at state level. Federal policy does not occupy the field; it polices its boundary against those who would. In our vocabulary this is *asalat al ibaha* raised to a constitutional principle. Our objection is not that permissibility is an unreasonable default, since in much of economic life it is the reasonable one, but that in the classical formulation the presumption is always paired with a robust law of liability (*daman*) that reallocates loss once harm materializes ([Executive Order No. 14179, 2025](#)). Permission *ex ante* is coherent only if compensation *ex post* is real. Where the same policy that removes anticipatory obligations also seeks to disable the statutes through which victims obtain remedies, the presumption becomes not liberty but immunity, and the criticism is philosophical rather than political: it would apply with equal force to an Iranian statute that liberalised deployment without strengthening remedy ([Executive Order, 2025](#)). Chinese regulation is comprehensive, binding and rapid, and its distinctive feature is temporal: permission precedes deployment, across a field far wider than the Union's high-risk subset. The usual criticism, that the system subordinates' individual rights to political order, is true but incomplete, since it does not explain why the system is internally coherent. The coherence comes from its subject: the entity whose interest is protected is the order itself, of which individuals are constituents rather than founders. This is a *maslaha* structure in the technical sense.<sup>1</sup> Iranian constitutional practice contains a formally similar mechanism, in the recognition of governmental rulings grounded in expediency and in the Expediency Discernment Council.<sup>2</sup> The lesson from China is therefore not that expediency-based regulation is foreign to Iranian law, but that expediency reasoning is disciplined only when the interest invoked is stated, contested and reviewable. An expediency judgment that cannot be examined is indistinguishable from an unreviewable preference ([CAC, 2025](#)).

### 3.2 Canada, the matrix, and a fourth future

Canada long served as the exemplar of a middle path, and that position must now be revised: the Artificial Intelligence and Data Act died on the order paper in January 2025 and has not

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Order of 11 December 2025 on ensuring a national policy framework followed, establishing a litigation task force within the Department of Justice to challenge state statutes while carving out child safety, compute and data-centre infrastructure and state procurement from its pre-emptive ambition.

<sup>1</sup> *Maslaha* is used here in its technical sense: a determination of what the collective interest requires, made by an authority competent to make it, and revisable when that interest changes.

<sup>2</sup> See [Article 112](#) of the Constitution and the standing of the Expediency Discernment Council, together with the treatment of governmental rulings in contemporary Shi'i political jurisprudence. The point made here is that the presence of such a mechanism makes expediency reasoning indigenous to Iranian law without thereby making it disciplined.

been reintroduced ([Innovation, 2022](#)).<sup>1</sup> The failure is instructive in a way success would not have been. A statute assembled out of the wish not to offend either constituency has no centre of gravity. For Iran the moral is uncomfortable, since it is frequently proposed, including in earlier work by one of us, that Iran should adopt a balanced model combining European rights protection with American innovation policy. Balance is not a philosophy. What is required is not the arithmetic mean of three foreign positions but a position ([Hacker, 2023](#)). Table 1 restates the comparison in the register argued for in Part 2. Each row is a question of legal philosophy rather than an indicator of compliance, and the cells record the answer each system gives, including the answer given by silence.

**Table 1. Five jurisdictions as answers to six prior questions (position as at July 2026)**

| Prior question                     | European Union                                     | United States                                   | China                                              | Canada                                   | Iran                                               |
|------------------------------------|----------------------------------------------------|-------------------------------------------------|----------------------------------------------------|------------------------------------------|----------------------------------------------------|
| Default under doubt                | Precaution, proportioned to risk tier              | Permissibility; restraint must be justified     | Prior permission; deployment follows clearance     | Undetermined after the lapse of AIDA     | Permissibility in practice; precaution in rhetoric |
| Who is the protected subject       | The natural person and fundamental rights          | The innovator and interstate commerce           | The order, of which persons are constituents       | Contested; unresolved                    | The system and the national capability             |
| Ontological commitment             | Product-safety model: the system is a placed good  | Instrumental: the system is a tool of its user  | Instrumental and political: a channel of content   | Impact model, abandoned before enactment | Unarticulated                                      |
| Who must answer                    | Provider and deployer, jointly specified           | Left to general law and state statutes          | Service provider, licensed and filed               | Would have been the high-impact deployer | No designated addressee                            |
| Form of accountability             | Conformity assessment plus supervisory enforcement | Ex post litigation, narrowing under pre-emption | Administrative approval and content responsibility | Privacy-law and directive-based          | Licence, permit and infrastructure conditionality  |
| Visibility of expediency reasoning | Denied, then exercised through the Omnibus         | Asserted as competitiveness                     | Explicit and doctrinally grounded                  | Implicit in the decision not to revive   | Explicit but institutionally unstable              |

One further observation follows, which the futures literature has not named. Alongside the familiar scenarios of convergence, fragmentation and private ordering there is now a fourth, which we call the deferral equilibrium: the major jurisdictions legislate and then postpone, so that the appearance of regulation is maintained while its application recedes. The European

<sup>1</sup> Canada's Bill C-27, of which the Artificial Intelligence and Data Act formed Part 3, fell from the order paper when Parliament was prorogued on 6 January 2025 and had not been reintroduced as of mid 2026. AIDA was criticised for the thinness of its statutory text, which left the definition of high-impact systems to future regulation, and for locating the enforcement commissioner within the department charged with promoting the industry.

postponement, the Canadian decision not to revive a lapsed bill and the American suspension of subnational rules are not three unrelated events. If this is the pattern, the advice usually given to states in Iran's position, to wait and learn from mature systems, is advice to wait for something that is itself waiting. The alternative is to legislate modestly and early on what does not depend on technical maturity: remedy, reason giving, apportionment and the identity of the authority. None of these requires a harmonised standard. All of them require a decision (Calo, 2017).

#### 4. Iran: From Lacuna to Mantaqat al-Faragh

##### 4.1 What actually exists?

The claim that Iran has no artificial intelligence law is repeated so often that it has acquired the status of a finding. It is inaccurate, and the inaccuracy matters, because it licenses the conclusion that nothing normative is happening. In fact a dense normative order has been constructed since 2024, almost entirely outside the legislature: the National Artificial Intelligence Document of Khordad 1403, the unstable institutional design that followed it, the [National Artificial Intelligence Development Bill](#) still before the Majlis in amended form, and the licensing principles for service providers promulgated in Ordibehesht 1405, which condition market entry upon substantial computational thresholds (CRAI, 2026).<sup>1</sup>

The pattern is unmistakable. Iran regulates artificial intelligence through licensing, infrastructure conditionality, policy documents and content measures, while rights, liability and remedy remain unlegislated. This is not the absence of governance but governance in the administrative register: a regime of permissions rather than obligations, addressed to providers rather than to the persons affected. In the vocabulary of Part 2, the Iranian order has so far declined to designate an addressee (Katouzian, 2015). The citizen subject to an automated credit decision or a biometric identification in a public space has no statutory right to know, to contest, or to obtain a reasoned human determination, not because the state has been inattentive to artificial intelligence but because its attention has gone to the provider rather than to the person (Esposito, 2015).

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<sup>1</sup> The record, compressed: the National Artificial Intelligence Document was approved at Session 901 of the Supreme [Council of the Cultural Revolution](#) on 29 Khordad 1403, together with the single-article resolution establishing the National Artificial Intelligence Steering Council and the National Artificial Intelligence Organization; the Document itself speaks expressly of the philosophical, ethical, jurisprudential and legal dimensions of artificial intelligence. The National Artificial Intelligence Development Bill was approved in principle in Ordibehesht 1404, considered in detail in Mehr and Aban 1404, returned with objections by the Guardian Council in Dey 1404, and amended in plenary on 20 Bahman 1404 by the deletion of Article 2, which had provided for the Steering Council and the Organization. The Principles Governing the Issuance of Artificial Intelligence Service Provider licences were approved at Session 364 of 29 Mehr 1404 and promulgated on 8 Ordibehesht 1405 by the Communications Regulatory Authority; a condition requiring computational capacity on the order of hundreds of petaflops determines, in practice, who may operate at all. Article 65 of the Seventh Development Plan obliged the government to submit an artificial intelligence bill within six months, and the lapse of that obligation is itself part of the record.

## 4.2 Three concepts of absence

To theorise this condition, we need to distinguish among kinds of absence, and Islamic legal theory has done the work. A defect (naqs) is a failure of the legal order by its own standards: a matter that ought to have been regulated has been overlooked. Silence (sukut) is the absence of a determination where the question has not arisen. Neither describes Iran, where the question has certainly arisen and where the relevant institutions have acted repeatedly. What describes Iran is the third possibility: a zone deliberately left open, in which the holder of authority is empowered to determine the rule according to the interest of the community, within limits fixed elsewhere (NIST, 2023).

This is the doctrine of mantaqat al faragh, developed by al Sadr in *Iqtisaduna*. His insight was that the completeness of the sharia does not entail the exhaustiveness of its determinations: alongside the fixed rulings there is an area in which no permanent rule has been laid down, not because the Lawgiver overlooked it but because the matter turns on circumstances that change, and in that area the wali al amr legislates for the time.<sup>1</sup> The corollary drawn by his students is that technological change is a principal generator of the empty zone.<sup>2</sup>

Nothing in the argument depends upon accepting al-Sadr's theology, and readers outside the tradition may read mantaqat al faragh as a structure comparable to Hart's open texture, with the crucial difference that al-Sadr theorises the empty zone as a permanent and constitutive feature of the legal order rather than a residue of imperfect drafting (Hart, 2012).<sup>3</sup> That difference connects directly to Part 2. If the person and thing partition can no longer be applied by subsumption, every application becomes a determination, and determinations of that kind are what the empty zone exists to accommodate. A jurisprudence that treats provisionality as failure will produce statutes that pretend to a permanence they cannot have, which is what the Union discovered in 2026 (Al-Sadr, 1982).

## 4.3 Three consequences of the reframing

First, the reframing denies innocence. If the zone is one of delegated normative power, filling it is an exercise of that power and not a preparatory act. When a regulatory authority sets a computational threshold as a condition of licensing, it decides who may develop artificial intelligence in Iran, and that is a legislative decision in substance whatever its form. The removal of the National Organization and the Steering Council from the Bill in Bahman 1404 did not reduce the discretion in the system. It relocated it, from an organ that would have been

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<sup>1</sup> Al-Sadr, *Iqtisaduna*, in the section devoted to mantaqat al-faragh. His well-known formulation is that no complete assessment of the economic doctrine of Islam is possible without taking the empty zone into account.

<sup>2</sup> See the gloss of Kazim Ha'iri upon his teacher's theory: because technological advance continually reconfigures the relation between human beings and nature, the existence of an empty zone is a condition of the comprehensiveness of the sharia rather than an exception to it.

<sup>3</sup> Hart's open texture concerns the inherent indeterminacy of rule-language and the inability of a legislator to foresee every instance. Mantaqat al-faragh is not a defect of language but a deliberate delegation of competence. The difference between the two is the difference between a gap and a grant.

constituted by statute to organs that are not (Dignum, 2019). Second, the reframing supplies limits, and disciplines the expediency invoked within them. The zone is empty only relative to what is fixed, and the principles bounding it are already present in Iranian constitutional and jurisprudential doctrine: the inviolability of dignity, person, property and communications; the prohibition on exercising a right so as to injure another or the public interest; and, at the level of the qawa'id, la darar wa la dirar (Mohaghegh Damad, 2016).<sup>1</sup> These are justiciable constraints upon whatever is enacted inside the zone. And since what is enacted there binds only because it serves the interest of the community, that interest must be capable of being stated and, once stated, of being wrong. Expediency that cannot be examined is not expediency but preference. Here al Sadr's doctrine turns from a licence for discretion into a demand for justification.

Third, the reframing identifies the decisive question as institutional rather than technical. Here Part 3's departure from Gunkel does its work. If answerability is allocated rather than discovered, the identity of the allocating organ determines the character of the resulting norms. Filling by the executive produces licence conditions: efficient, revisable, opaque, unenforceable by those they protect. Filling by the legislature produces rights and remedies: slower, cruder, public, claimable. A serious Iranian debate would be a debate about that choice, and it has not yet been held.

#### **4.4 A native grammar of answerability**

It is commonly asserted, including in earlier work by the present authors, that Iranian civil liability doctrine is a classical apparatus inadequate to novel technological risk. The assertion is too quick. What Iranian law lacks is not doctrinal resources but the conceptual work of applying them, and in one respect its resources are better adapted to distributed causation than those of the systems Iran is urged to imitate. The relevant apparatus is the distinction between direct agency (mubasharat) and occasioning (tasbib) and the rules governing their concurrence: Article 331 of the Civil Code makes liable one who occasions the destruction of another's property, Article 332 addresses the case where an occasioning cause and a direct agent combine,<sup>2</sup> and the [Islamic Penal Code of 1392](#) apportions liability in proportion to the effect of each contribution.<sup>3</sup> Proportional liability by degree of causal contribution is precisely the

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<sup>1</sup> See Articles 2, 20, 22 and 25 of the Constitution, and in particular Article 40: no one may exercise a right as a means of injuring another or of infringing the public interest. That article alone supplies an indigenous foundation for a harm principle in the law of artificial intelligence, and the maxim la darar wa la dirar furnishes its jurisprudential support.

<sup>2</sup> [Article 331](#) of the Civil Code establishes liability arising from occasioning, and Article 332 provides that where one person occasions the destruction of property and another is the direct agent of its destruction, the direct agent is liable and not the occasioning cause, unless the occasioning cause is the stronger. The argument in the text is that with opaque systems the occasioning cause will frequently be the stronger.

<sup>3</sup> Article 526 of the Islamic Penal Code 1392: where direct agents and occasioning causes concur, liability attaches to the party to whom the harm is attributable; where it is attributable to all, they are liable equally; and where the

structure that algorithmic supply chains require and that regimes built on the single intending author struggle to supply (Hildebrandt, 2015). The philosophical significance of this apparatus has been overlooked, including by us. A law of *tasbib* does not ask who authored the harm. It asks whose conduct set in motion the sequence that produced it, and it apportions answerability accordingly. In other words, Iranian civil doctrine already operates on the model of allocated answerability that Part 2.3 proposed, and it does so without any commitment as to the nature of the intervening cause. The Islamic jurists did not need to decide whether a runaway animal, a diverted watercourse or a falling wall was an agent. They needed to decide who would answer, and they answered that question by reference to the structure of the sequence. That is exactly the question artificial intelligence poses, and it is why the doctrine transfers without strain.

Two proposals follow. The first is that design, training and deployment decisions should be analysed as occasioning rather than direct agency, so that liability is apportioned among developer, deployer and operator according to the effect of each contribution and no participant escapes by pointing to another's intervention. The user who acts on an automated recommendation is a direct agent, but where opacity deprived her of the capacity to evaluate it, the occasioning cause is the stronger and liability moves upstream. This is not an innovation in doctrine but an application of Article 332 to a fact patterns its drafters did not foresee (UNESCO, 2021). The second proposal concerns opacity and invokes *gharur*, the doctrine that one who is misled may have recourse against the one who misled him.<sup>1</sup> A system whose outputs carry an authority their reliability does not warrant, and whose reasoning is unavailable to the person relying on it, places that person in a condition the jurists would recognise. The move is to treat unexplained deployment in a high stakes context as a *gharur* generating condition, shifting the burden of disproving causation to the party who controlled the opacity. Iranian law thus reaches, by an indigenous route, a functional equivalent of the rebuttable presumptions the European liability debate has been trying to construct by directive, and reaches it with the better justification, since the ground of the shift is not administrative convenience but the moral position of the party who created the asymmetry (Zuboff, 2019). Two further resources deserve mention: the Electronic Commerce Act of 1382, which has attributed the effects of automatically generated data messages to the person on whose behalf the system operates for two decades without anyone noticing that this is an attribution rule for machine communication,<sup>2</sup> and the constitutional requirement that judgments be reasoned, which anchors

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effect of their conduct differs, each is liable in proportion to that effect. Liability proportioned to causal contribution is precisely the structure that algorithmic supply chains require.

<sup>1</sup> The maxim of *gharur*, *al maghrur yarji'u ila man gharrahu*, gives the person who has been misled recourse against the one who misled him. The application proposed here is that deploying an unexplainable system in a high stakes setting creates a *gharur*-generating condition, shifting the burden of proof onto the party who created the opacity.

<sup>2</sup> See the Electronic Commerce Act 1382, and in particular its provisions attributing data messages to the originator and governing the legal effects of automatically generated data messages. The claim in the text is that Iranian law

the central individual right we propose, a right not to the explanation of a model but to a human reason (Fuller, 1969).<sup>1</sup>

#### **4.5 The moving substance**

One further indigenous resource deserves more than the passing mention it usually receives. The characteristic difficulty of technology law is that its object will not hold still: the entity described in the definitional section is not the entity in existence when the section is applied. Iranian philosophical tradition possesses an unusually sophisticated treatment of this problem in Mulla Sadra's doctrine of substantial motion, according to which change is not an accident befalling a stable substance but a mode of the substance itself (Mulla Sadra, 1981).<sup>2</sup> The doctrine was formulated for a metaphysical purpose and we do not pretend otherwise. But its structure bears directly on our argument, because it denies exactly what legal definition presupposes, namely that there is a fixed essence to be captured and then referred to.

If that is the character of the object, the technique of fixing a substance by definition and attaching consequences to it is not merely inconvenient. It is categorically mismatched. What follows is a preference for statutes that regulate relations, effects and thresholds of impact rather than kinds of system, for definitions that are minimal and revisable, and for instruments that presuppose their own revision. There is an irony worth stating plainly: the European deferral of 2026 is the empirical vindication of an insight Iranian philosophy articulated in the seventeenth century and Iranian legal drafting has yet to apply (Yeung, 2018).

#### **5. Five Design Principles for an Iranian Statute**

The following principles are derived from the preceding argument rather than appended to it. Each states a commitment, its philosophical ground, and its drafting consequence.

1. Regulate relations, not entities. Obligations should attach to the relation between a system and the person affected by it, that is, to the making of a determination, the allocation of a benefit or the restriction of a liberty, rather than to a taxonomy of systems. Ground: the ontological anomaly of Part 2. Consequence: a short definitional article, subordinated to an operative provision keyed to impact upon persons.
2. Fix the limits of the zone before enlarging it. Dignity, the inviolability of person, property and communications, the prohibition on injuring another through the exercise of a right, and

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has possessed an attribution rule for machine-generated communications for more than two decades without recognising it as one.

<sup>1</sup> Article 166 of the Constitution requires that judgments of the courts be reasoned and grounded in the articles of law and the principles on which the judgment is based. What is proposed here is the extension of that logic from judicial decisions to administrative determinations materially assisted by automated systems: a right to a human reason in place of a right to technical explanation.

<sup>2</sup> Substantial motion (*harakat jawhariyya*) in the transcendent philosophy of Mulla Sadra: change is not an accident befalling a stable substance but a mode of the substance itself. The legal implication proposed here is that a static definition of an intrinsically fluid object is mistaken from the outset, and that legislation should therefore address relations and effects rather than kinds of system.

la darar should bind all subsequent regulation, including regulation made by the executive. Ground: the boundedness of the mantaqat al-faragh. Consequence: a principles article with interpretive force, not a preamble.

3. Build liability on tasbib, and shift the burden where opacity is created. Contributions to design, training, provisioning and deployment should be declared occasioning causes; liability should follow the effect of each contribution; a downstream direct agent should not exonerate a stronger upstream cause; and where a defendant deployed a system whose functioning was unavailable to the claimant in a context of consequence, the burden of disproving causal contribution should lie on the defendant. Ground: Articles 331 and 332 of the Civil Code, Article 526 of the Penal Code, and gharur. Consequence: a liability chapter extending existing doctrine rather than importing a foreign strict liability regime, together with an evidentiary provision that creates no new head of liability.
4. Guarantee the assignable answer. Every person subject to a determination materially assisted by an automated system should be entitled to a statement of reasons given by an identified human being, and to have the determination reconsidered by one. Ground: the principle stated in Part 2.3 and the constitutional duty to give reasons. Consequence: a right enforceable in the administrative courts, with a defined and short period for response, and an express prohibition on discharging the duty by disclosure of technical documentation alone.
5. Decide, in the statute, who holds the pen, and legislate for revision. The instrument should name the organ that exercises the delegated power within the zone, the grounds on which it acts and the review to which it is subject; should require any determination made on grounds of collective interest to state that interest and to follow consultation with those affected; and should provide for sunset clauses, fixed review dates and a statutory sandbox with defined immunities. Ground: Part 5.3 and the doctrine of substantial motion. Consequence: a statute short in the body, revisable in the annexes, binding in its review dates. Whatever design the political process settles upon must be settled by statute, since the alternative is not the absence of an authority but an unnamed one.

### **Conclusion: What Survives the Collapse?**

We began with a question and should end by answering it plainly. Can the juridical order still distinguish the agent from the instrument, the person from the thing, the author of a decision from the medium through which it passes? As descriptions of what things are, no. The machine is, in the formulation we borrowed from Gunkel, an excrescence that escapes the grasp of the existing categories, and no amount of drafting will make it fit. Legislators who believe a sufficiently careful definition will restore the partition are attempting what cannot be done.

As allocations of answerability, yes, and this is the more important half of the answer. Law never needed the ontology it claimed to rely on. It needed an addressee, and an addressee is

appointed rather than found. The distinctions survive their ontological collapse in the only form that ever did legal work: as decisions about who must answer, taken by an institution competent to take them and defended in public as decisions. What artificial intelligence has destroyed is not the distinction between agent and instrument. It is the comfortable belief that the distinction was given to us by the world rather than made by us.

This is why Iran's position is theoretically interesting rather than simply belated. A legal order that has not yet legislated is one that has not yet concealed its allocation behind a definition. Iran occupies a mantaqat al faragh, a zone filled continuously by licensing authorities and policy councils rather than by the legislature, whose emptiness describes the form its law is taking rather than its absence. The reframing carries obligations, since discretion exercised is power exercised, and power exercised requires justification, limits, and an addressee entitled to demand reasons. It also carries an opportunity, because a system that need not first repeal an unsuccessful statute is free to legislate on what matters and to leave the rest to revision.

Such a statute would owe its central doctrines to Iranian law rather than to the annexes of foreign regulations: occasioning and proportional causation in place of imported strict liability, the recourse of the misled in place of a directive drafted presumption, and the constitutional duty to give reasons in place of a right to explanation no claimant can operationalise. There is no reason for a legal tradition of this depth to arrive at the problem of the machine as a borrower. The final question is not whether Iran will regulate artificial intelligence, since it already does, but whether it will do so in a form that a person injured by an automated decision can invoke. That is not a technical question. It is the oldest question there is about law: to whom is it addressed, and who may be required to answer.

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